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Answer to the Considerations on the Establishment of a Regency

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ANSWER

TO THE

CONSIDERATIONS

ON THE ESTABLISHMENT OF

A REGENCY.

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ANSWER, &c.

THE author of the Conſiderations on the Eſtabliſhment of a Regency, if his object had really been that which he profeſſes in his 52d page, namely, "to contribute to ſettle, on conſtitutional principles, "a tranſaction which is intereſting to our "preſent happineſs," ſhould have firſt well informed himſelf what the principles of the conſtitution are, to which the preſent ſtate of affairs are applicable, and well ſtudied thoſe precedents that bear any analogy to the exiſting ſituation, or to that conſtitution which he admits (page 5,) "has been changed by "the revolution of ſo many ages." That the author has not qualified himſelf for the taſk he has undertaken, muſt be evident

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to all thoſe who have read his pamphlet, and looked over the precedents he relies upon; unleſs they ſuppoſe, that not his ignorance, but his intereſt, has tempted him to endeavour to miſlead the public. I ſhall therefore endeavour to point out the fallacy of his ſtatement, and of the arguments he makes uſe of in ſupport of his doctrine, and give ſuch reaſons as have convinced me that the principles he lays down as a baſis on which to eſtabliſh a temporary government on conſtitutional principles, are not only not ſound and conſtitutional, but grounded on the worſt and moſt dangerous policy, and unſupported by any precedents applicable to the preſent caſe; and that the ſyſtem of government, if practicable, is not neceſſary to ſecure thoſe plauſible ends which he endeavours to perſuade the public are attainable by no other means.

The profeſſed object of the pamphlet is, to ſecure the rights of the crown from imaginary dangers ariſing from the neceſſary transfer of its authority to a Regent, during the melancholy incapacity of its owner to

execute

execute his royal functions, and to insinuate to the public, that this object cannot be secured if the whole authority is transferred. The author in his argument supppoſes (what is not true) that the two houſes, in their preſent crippled ſtate, without a head, or vital principle, are a perfect and complete legiſlature, competent to make new proviſions, better fitted to the exigencies of the moment than the common law of the land has provided; and he ſuppoſes, that in the caſe of a defect in the royal capacity, ſhort of death, the whole kingly power falls immediately to the people; and by a ſingular application of the laws of falling bodies, rebounds into the hands of the two remaining branches of a maimed legiſlature; for in page 10, he ſays, that "it remains with the "people to exerciſe this power which they "have *reſerved*;" and then ingeniouſly finds, that though the people had not delegated this power to their conſtituents, from whom it paſſes to them by reſervation, yet their conſtituents alone, *from* whom it is reſerved, can exerciſe this power, and not

the perſons who have reſerved it;—but the premiſes are falſe, and his concluſion ridiculous and unlogical. He then proceeds boldly to aſſert, that "the degree of au-"thority which it may be neceſſary to grant, "cannot be claimed as a right, but muſt be "conferred as a truſt;" and grounds this doctrine on the following arguments, that "during the life of a Britiſh king, no man "can claim an hereditary right to the exer-"ciſe of royal power—*nemo eſt hæres viven-"tio*;" which he ſays "is equally appli-"cable to every deſcription of right and "property;" and he endeavours to fortify his doctrine, by a reference to the revolution, and other precedents in more ancient times. In anſwer to this aſſertion I venture to aſſert, not only that a claim may be made to the exerciſe of royal authority during the temporary incapacity of the legal owner, but that the peace, tranquillity, and unity of this empire, depends on the maintenance and acknowledgement of that claim. *Nemo eſt hæres viventio*—is certainly a maxim of law, though not applicable to a king, who, by as

old

old a maxim of the ſame law, never dies; the maxim thus applied, is certainly out of its place; but even in its application to private property, it is not ſo inflexible a rule as to admit no exception; for a ſon becomes heir to his living father, who renounces wordly affairs by monaſtic vows and engagements. How far, if releaſed from thoſe vows and engagements, he could reſume his intereſt in his transferred property, is immeterial; certain it is, that during his legal incapacity, he is dead in law; and his heir or executor may maintain actions as ſuch, even during his natural life. This formidable argument, therefore, has no ground to reſt upon; but it would even be defective in its application, if it had been unexceptionably true as a maxim; for in the preſent caſe, there is no queſtion of ſucceſſion as heir to the full indefeaſible right to the *crown*, but during its incapacity, to the full exerciſe of the authority belonging to it for the public good, not given (in the phraſe of the author, page 8,) "for the advantage of any individual family, "however entitled to our gratitude and ve-
"neration."

" neration." It is a right inherent in the prince of Wales, of full age, as guardian apparent, as well as heir apparent to the kingdom, more intereſted than any perſon to preſerve the unity of empire, and the integrity of the conſtitution; to ſee that no new forms of government be introduced by interſted men, to change, or diſcredit, and weaken the reverence due to the eſtabliſhed monarchical form of government, and make elective the authority of an hereditary monarchy, which the author of the Conſiderations flatters himſelf he ſhall perſuade the public becomes naturally elective, on the principles of hereditary ſucceſſion. The author, well knowing the almoſt religious veneration the public juſtly have for the principles of the revolution, wiſhes to perſuade them, that there is ſome analogy between the principles of the revolution, and the principles he has laid down: to prove any analogy between the ſituation and conduct of the convention of that time, and of the preſent, he muſt find that the ſituation of James II. who had broke the original

compact,

compact, and by acts of despotism forfeited his crown, which by the forfeiture became no longer descendable, but was declared compleatly vacant, was similar to the situation of a monarch who has respected the rights of his people, but is for the present rendered unable, by the melancholy state of his health, from exercising the functions of his royal office; he must likewise show that a prince of Wales, of full age, undisputed heir to the crown, is to be regarded as a child, called by some, prince of Wales, and whose royal birth was denied by the greatest part of the kingdom. It is in vain to attempt to assimulate the situations, and it will be equally in vain to search for principles in the revolution, which can support the doctrine of the author of the Considerations. Every principle deducible from that period, which can have any relation to the present situation, militates against the author's positions. The opinions of both parties at that time, contending with the utmost zeal, for, and against, the declaration of the *vacancy* of the throne, proves the acknowledged maxim,

that

that unleſs the throne had been forfeited completely, and declared perfectly vacant, they could not, *as a convention*, alter the hereditary ſucceſſion. Hence aroſe the great earneſtneſs on each ſide,—the one to maintain, the other to get rid of the declaration of the *vacancy of the throne*; both agreeing, that king James had loſt his perſonal right to the exerciſe of his authority; but diſagreeing in the terms in which it ſhould be expreſſed, becauſe their concealed views were different;—the one party determined to involve in the father's forfeiture the doubtful heir, who would add to the dangers of a diſputed birth, thoſe ariſing from a popiſh education,—the other wiſhing to adhere to the lineal ſucceſſion, and to enter into the examination of the doubful birth; though the ſubtlety with which they urged on the one ſide, and evaded on the other, the open avowal of their intentions, this maxim appears manifeſt, that the ſimple removal or ſuſpenſion of the father's authority, could not bar the ſon's right; and that nothing veſted a power to ſupply the deſerted throne

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by an election, but its total *vacancy*; those who maintained the vacancy, denied that they made the crown elective, by filling a throne fundamentally vacant, which must remain vacant, if no election, *pro hac vice*, took place; but they professed neither to have the power, nor wish, to alter the hereditary monarchical constitution of the land; nor did they profess to abridge, or alter the legal powers of the crown; they did not indulge their imaginations, in forming new systems of government; they supplied the throne with no novel sceptre, but by a King, known, defined, and limited by the antient laws of the land. They found the first and most important branch of the legislature abdicated; they found themselves thereby maimed, and unfit for the execution of their trust; they established and confirmed the lost existence of the authority of the crown, in the person of an elected king: thus far, and no further, could they act as a convention, and no further did they attempt to

act. The king ſo elected, became a king *de facto*; and the act of Henry VII. gave him power and authority; it required a ſubſequent act of the legiſlature to limit the ſucceſſion in the manner deſired, without which it was known, that the wiſhes of the people, in the limitation, could not have the weight of law. This I take to be the clear ſtate of the principles of the Revolution, as far as they are applicable to the preſent caſe; in many points they cannot be applied; the throne cannot now, as then, be declared vacant; for there is no forfeiture. Upon the principles of the Revolution, *this convention* can only find, as a jury, who the perſon is who legally fills the place, during the melancholy occaſion that ſtagnates the vital energy of the conſtitution; they muſt fill it according to the law of the land, which nothing but a full parliament can alter; they cannot indulge their fancy with idle dreams of Utopean government; nor aſſume a legiſlative power, to undermine the prerogative of the crown, by declaring, with the Author of the Conſiderations,

tions, that all the prerogatives of the crown, and kingly authority, are not neceſſary for the good government of the land; but may, by its abuſe, be of the utmoſt prejudice, and, therefore ought not to exiſt; for if they do not exiſt neceſſarily for the good of the whole community, they ought not to exiſt either in King or Regent. I am founded in this aſſertion, by the author's own confeſſion, p. 8. that the monarchy of "theſe "realms has been eſtabliſhed amongſt us, "not for the advantage of any individual "family, however entitled to our grati-"tude and veneration, but for the benefit "of the nation, and for the ſecurity and "happineſs of millions."

The precedents of the 1ſt of Henry VIth, referred to by the author, and to be found in the Rolls of Parliament, are ſtated ſo falſely, that on the ſimple examination, the motives of the author muſt immediately appear, not to ariſe from that affected zeal he profeſſes, to ſecure his ſovereign from imagined dangers of his own creation, but from ſome apprehenſion he may entertain for his

own ſituation, or thoſe of his employers. To eſtabliſh his principle, that no claim can be legally made to the exerciſe of royal power, he ſtates a claim to have been made by "one of the relations of the King to "the Regency, in the 1ſt of Henry VIth. "during his minority," and that "this "claim was formally examined and diſal- "lowed by parliament," who, in the words of parliament, "after long and great deli- "berations and advice, ſearching precedents "of the government of the land in ſimilar "times and caſes, when the kings of this "land have been of tender age, and taking "information of the laws of the land, "from ſuch perſons as were learned there- "in, finally found the ſaid deſire not "grounded in precedent, nor in the law "of the land." A more impudent attempt to miſlead he public, by a falſe ſtatement, cannot be found.

Henry the Vth, on his death bed, deſired, that his elder brother, "the duke of Bed- "ford, ſhould take upon him the admi- "niſtration of the affairs of France;" and

"his

" his younger brother, the duke of Glou-
" ceſter, be *Protector* of England, during
" his ſon's minority." Vide Rapin.

After the king's death, a parliament was ſummoned, by writ, dated September 29, 1422, in the young king's name; and on the day of its meeting, a commiſſion, directed to the duke of Glouceſter, to empower him to hold the parliament, in the king's name, was read in the preſence of the duke. The duke of Glouceſter, at this parliament, claimed by his birth, and the late king's will, to have the government of the land; the parliament were of opinion, that the king could not diſpoſe of the government of the land beyond his life; nor *alter or change the government, without the conſent of the three eſtates.* Vide Rolls of Parliament, Vol. iv. p. 326. and they were of opinion, that the younger uncle, the duke of Glouceſter, had no right; but they confirmed the right of the elder uncle, the duke of Bedford, by declaring him Protector; and, in his abſence, that the duke of Glouceſter ſhould be Protector, who took upon him the ſaid dignity,

dignity, under proteſtation that it ſhould be no prejudice to the *right* of his brother. Vide Parliamentary Hiſtory, Vol. ii. p. 178. Thus ſtands this rejected right referred to, and miſtated by the author; and proves to be, not a claim of right rejected, as admitting no right, but a right admitted, by parliament, to exiſt in the nearer relation to the crown, the duke of Bedford. This right proved ſo ſtrong, that it overruled the inclination and dying requeſt of a popular and beloved king. This alſo was an act of a full parliament, not a convention, which has no authority to enact laws. The parliament was held by a commiſſion, under the great ſeal, the age of the king being at that period no obſtacle to many acts of royal authority, in which "the laws changed "(as the Author of the Conſiderations ſays) "by the revolution of ſo many ages," have ſince limited the activity of a minor king. "The author ſays, they gave this rejected "claimant a more limited power, ſubject "to the controul of a council, by a name "conceived to be of leſs dignity than Re-

"gent,"

" gent." The fact is, the parliament, and not the convention, declared him Protector; an office not only of leſs dignity, but leſs power by law; for a Protector could not ſummon, hold, or diſſolve parliament, to which the minor king was conſidered then as competent, nor to do any other act to which the minor was conſidered as competent. In the 4th and 6th year of his reign, the minor not only ſummoned, but perſonally held the parliament, and yet the protectoral authority remained. The council, which is ſaid to have limited the power of the protector, was a council to the king, and not to the protector; of which council the protector was preſident, and, in augmentation, not controul of his authority. Parliament, not a convention, directed the council, amongſt other things, " in ſuch " matters that the king had been accuſtom- " ed to be *conſeilled* with; that then the " ſaid lordes procede not ther ynne with- " onte the *adviſe* of the lordys of Bedford " or Gloceſter." Vide rolls of parliament, vol. iv. p. 176. So that, ſo far from being

limited

limited by this council, he has the authority of the king given him in council. The author, through all his falſe ſtatements, endeavours to blend and confuſe the two offices of Regent and Protector, as equally limited in power and authority. The fact is not true, as appears from the rolls of parliament in the reigns of Edward III. and Henry V. Frequent appointments appear of a *cuſtos regni*, with full Regal power. In the 5th of Edward III. John of Eltham, Earl of Cornwall, was appointed *Cuſtos Regni*. In the 12th of Edward III. during his abſence in Flanders, Edward, duke of Cornwall, afterwards prince of Wales, was appointed *Cuſtos Regni*, with full Regal authority; he diſpoſed of offices, &c. ſummoned and held parliament, and commiſſions run in the king's name, and that of the lord warden of England. In Henry the Vth's reign, the duke of Bedford, and the duke of Glouceſter, were, at different times, Regent, with royal authority, during the king's abſence; they ſummoned and held parliaments, and did every other Regal act.

The

The parliament ſummoned by them was, *ipſo facto*, diſſolved by the return of the king; to prevent which, an act ſtill remains on our ſtatute book of the 8th of Henry V. During his tender age, the king was deemed capable of doing many acts, therefore did not require a Regent to occupy the whole royal authority, but a Protector to fill up the partial defects of his royal authority. The young king could, by law, ſummon and hold parliaments, and actually, in perſon, met and held thoſe of the 4th and 6th years of his reign; and the Protector held, of courſe, a limited office, not that of Regent, nor any (as the parliament told the duke of Glouceſter) "that im-"ported the authority of governance of the "land, but one that importeth perſonal "duty." It is plain that the legiſlature was reckoned complete during the minority of the king; for the duke of Glouceſter is told, that he had no authority in parliament but as duke of Glouceſter, the king being in parliament at years of meet diſcretion; but his executive power was deem-

ed defective. In caſes of abſence, where the whole royal authority, of neceſſity, was ſuſpended, no leſs than a Regent, with full royal power, was appointed. It appears alſo, that the right of the elder brother to any legal transfer of royal authority, was, by parliament, acknowledged in the perſon of the duke of Bedford, againſt the will of Henry V. and the claim of the younger brother.

The two precedents referred to during the diſorder of Henry VI. cannot be relied on. The firſt preceded the battle of St. Albans, a few months; and the other followed the victory and the capture of the king: but even in the protectorate of the duke of York, he is declared, ſaving the right of the prince of Wales, then ſix months old, in the terms of the roll, vol. v. p. 242, "ſo that it be not prejudice to my lord the "prince." But I ſhall not dwell on precedents in a civil war, which ended by the dethroning and murder of the king, and the reſtoration of the elder line of York. The author having miſtated all theſe prece-

dents, proceeds to ſay, that it is the indiſpenſable duty of parliament to allow no degree of authority to be exerciſed which ſhall be incompatible with the maintaining the king in the poſſeſſion of his rights, and enabling him to re-aſſume the exerciſe of them whenever his health ſhall allow it. This jargon is ſo unintelligible, and ſo unaccompanied with any ſtatement of the ſpecific authority he thinks would have this effect, that it is difficult to form any other judgment of it, but that a ſimilar jargon might, with equal reaſon, be uttered to parliament with the king on the throne; that it was the duty of parliament to prevent any degree of authority being exerciſed that ſhall be incompatible with maintaining the lineal ſucceſſion to the crown, and the full reverſionary right of the heir apparent. Whatever are the duties of parliament, when we have got one, I hope and truſt they will perform; but nothing a convention can do, can bind a parliament even to their duty, nor the meaneſt ſubject of the realm; a convention cannot abridge or alter the

rights of the crown, though they can pronounce ſentence of forfeiture on the owner, without whom no parliament can act; they cannot alter the conſtitution, though they can fill a vacant throne, during the vacancy of which no parliament can act; but no act which parliament can do, is a convention capable of doing. There is, in the preſent caſe, no pretence to ſay the throne is vacant; the rights of the king, therefore, remain unimpeached and ſecured by all the weight and force of the laws, and will be by the weight and authority and affection of every future parliament. Nothing that parliament can do, much leſs a convention, can add any thing to ſecure allegiance to the king; can give him better hold on the love and affection of his ſubjects than he already has, or remove the fear of treaſon further from him. The exerciſe of royal authority, by the heir apparent, cannot take away the king's right no more than the exerciſe of royal authority by the king can endanger the future rights of the heir apparent.

Whatever

Whatever authority the public good does not require in the hands of a Regent, is too much in the hands of the king; I know but one alarming Regency, which is that of ambitious miniſters voting themſelves in power, or one hampered in its authority, by men, ambitious, finding an intereſt in weakening the accuſtomed powers of government. No heir apparent ever exerciſed the limited authority of a protector; nothing ſhort of the authority of Regent ever was held by an heir apparent. The king, in full enjoyment of his faculties, may poſſibly himſelf, certainly with concurrence of parliament, appoint any other perſon or perſons to execute the office of Regent, but the law prefers no perſon before the heir apparent; who has the ſame right of preference which the duke of Bedford had over his brother. The office of Regent is not a limited office, it is a complete *locum tenens*; by which name it is ſometimes called. It appears by the anſwer of parliament, to the duke of Glouceſter, (who having been in the preceding reign, Regent; could not digeſt

digeſt the more limited authority of Protector, and enquires into the extent of his authority) that he was Protector, and not Lieutenant Governor or Regent, nor any name that imported the government of the land. Vide Rolls, Vol. v. p. 326. and, therefore, they pray, exhort, and require him to content himſelf with the power aforeſaid; and it appears by this anſwer, that the authority of Regent would not have been ſo limited. If, therefore, the office of Regent is known to the conſtitution, as it certainly is, if alone, it fills the whole ſpace of the throne, without aſſuming the crown, during the abſence of the King, and without impeaching his return, what authority, in point of policy, is ſo adapted to the preſent occaſion? If, on the other hand, a ſet of deſigning men, for their own views, wiſh to make the office elective, and liable to limitation, will they find themſelves ſupported by any perſons, who muſt foreſee, that Ireland may *elect* for itſelf, and fill the office with a different Regent with different limitations; if the Regency devolves

of

of right, it covers equally the three united kingdoms; who will venture to aſſert, that, by the Union, the people of Scotland gave up their right of changing their government to a convention of two eſtates; by what clauſe of the Union are the ſixteen peers alone to meet in convention, when neceſſity forces an election of a third eſtate? Certainly, the author of the Pamphlet will not contend with me, that it does not devolve to the people, for he affirms it does. I truſt, therefore, it will appear manifeſt, not only that the Heir Apparent is of right ſole Regent, with full royal authority, during the incapacity of the king, to act for himſelf; and that it is ſound policy, as well as law, that it ſhould be ſo; and that no convention has, or can have power, to change, alter, or abridge the royal authority, which preſides over the country; though they muſt, when neceſſity compels, change the perſon, in whom, by the law of the land, it integrally reſides for the good of the people.

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